

RESOLUTION NO. 2018-21

**RESOLUTION AUTHORIZING CITY MANAGER TO RELEASE RESERVATIONS
AND RESTRICTIONS AFFECTING 1939 23RD AVENUE**

WHEREAS, the City owned property located at 1939 23rd Avenue (Washington County Map and Tax Lot 1N331CC02400) as shown on Exhibit A; and

WHEREAS, the subject property was sold by the City and conveyed by warranty deed recorded on June 2, 1941 in Book 199, Page 0395 in the official records of Washington County; and

WHEREAS, the warranty deed contains reservations and restrictions affecting the use of the property (Exhibit B); and

WHEREAS, the City released the property from one of the restrictions July 14, 1945 (Exhibit C); and

WHEREAS, a prospective purchaser of the property requests the City release the property from the remaining restrictions; and

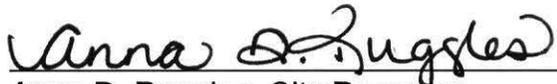
WHEREAS, the remaining restrictions are no longer necessary as development is now regulated by the Forest Grove Code of Ordinances and Forest Grove Development Code.

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE AS FOLLOWS:

Section 1. The City Manager is authorized to execute the necessary legal document, substantially in the form of Exhibit D, releasing the property located at 1939 23rd Avenue from the all remaining reservations and restrictions described in the Warranty Deed recorded June 2, 1941 (Exhibit B).

Section 2. This resolution is effective immediately upon its enactment by the City Council.

PRESENTED AND PASSED this 22nd day of January, 2018.



Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 22nd day of January, 2018.



Peter B. Truax, Mayor

**1939 23rd Avenue
Vicinity**



4730

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS: That City of Forest Grove, a municipal corporation of the State of Oregon, in consideration of Two Hundred Twenty-Five Dollars the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto Harry Bartlett and Vera Bartlett, husband and wife, hereinafter called grantees, and unto their heirs and assigns forever, the following described real property, situate in the County of Washington, State of Oregon, to-wit:

Lot 1, Block 10, Walker's Addition to Forest Grove, as shown on the duly recorded map and plat thereof. Being a tract 201.3 ft. x 201.3 ft.



Subject to the following reservations and restrictions:

1. Any structure erected hereon shall comply with all of the fire regulations, building construction regulations and ordinances of the City of Forest Grove, and the usual building permit shall be applied for and obtained.
2. That the products sold hereon shall be those usually sold in service stations, to-wit: gasoline, lubricating oil and sundry motor vehicle supplies, and that repair work may be done, but not any kind or type of wrecking or sale of second hand parts.
3. Grantee shall not sell or give away any type of merchandise supplies or amusements that will be of interest to the grade school children, nor shall he permit grade school children to visit or loiter or play around the premises during any regular school day.
4. That if any of the above conditions are violated and such violation continues for a period of two days after regular written notice has been served upon the purchaser by the Chief of Police, then and in that event the Common Council of grantor may, without further notice by Resolution, revoke and rescind said permit and after said revocation further operations of said service station shall be deemed in violation of Ordinance No. 502, or that any violation of the above conditions may be restrained by an injunction to be issued by the Circuit Court of Washington County upon proper application.

Together with the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining; and also all its right, estate, title and interest at law and equity therein and thereto.

TO HAVE AND TO HOLD the same to the said grantees, their heirs and assigns forever, and said grantor does covenant with

the said grantees, their legal representatives forever, that it will and its successors shall WARRANT AND DEFEND the said premises to the said grantee, their heirs and assigns, forever, against the lawful claims and demands of all persons, except as above set out.

IN WITNESS WHEREOF, City of Forest Grove, pursuant to a resolution of its Common Council, duly and legally adopted has caused these presents to be signed by its Mayor and Recorder and its corporate seal to be hereunto affixed this 30th day of April 1941.



CITY OF FOREST GROVE
L. B. Drake Mayor
CITY OF FOREST GROVE
Arthur J. Yeomans Recorder

STATE OF OREGON
COUNTY OF WASHINGTON.....SS

On this 30th day of April 1941, before me appeared L. B. Drake and Arthur J. Yeomans both to me personally known, who being duly sworn, did say that he, the said L. B. Drake is the Mayor, and he the said Arthur J. Yeomans is the Recorder of City of Forest Grove, the within named corporation and that the seal affixed to the said instrument is the corporate seal of the said Corporation, and that the said instrument was signed and sealed in behalf of the said Corporation by authority of its Common Council, and the said L. B. Drake and Arthur J. Yeomans acknowledged said instrument to be the free act and deed of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and Notarial Seal the day and year last above written.



Joseph B. McCreedy
Notary Public for Oregon.

My comm. expires 8/30/44

Filed for record Book 1-19-118-124
W. A. Tupper, County Clerk
By Ophele Whinn, Deputy

5072

RELEASE OF RESTRICTION

KNOW ALL MEN BY THESE PRESENTS: That City of Forest Grove, a municipal corporation, in consideration of One Dollar and other consideration, does hereby release the following described property:

Beginning at the southeast corner of lot 1, block 10, Walker's Addition to Forest Grove; thence north 100 feet; thence west 50 feet; thence south 100 feet and thence east 50 feet to the place of beginning.

from restriction No. 2, reading as follows:

"2. That the products sold hereon shall be those usually sold in service stations; to-wit: Gasoline, lubricating oil and sundry motor vehicle supplies, and that repair work may be done, but not any kind or type of wrecking or sale of second hand parts."

set out in a part of a certain deed recorded June 2, 1941, in Book 199, page 395, deed records of Washington County, Oregon, in which deed City of Forest Grove was grantor, and Harry and Vera Bartlett were grantees.

Aside from the above release, the conditions set out in said deed recorded June 2, 1941, are to remain in full force and effect.

IN WITNESS WHEREOF, CITY OF FOREST GROVE, pursuant to a resolution of its Common Council, duly and legally adopted, has caused these presents to be signed by its Mayor and City Manager, and its corporate seal to be hereunto affixed this 14th day of July, 1945.

CITY OF FOREST GROVE

BY [Signature]
Mayor

BY [Signature]
City Manager



428

STATE OF OREGON }
COUNTY OF WASHINGTON } SS.

On this 14th day of July, 1945, before me appeared F. D. Gardner and W. H. Weber, both to me personally known, who being duly sworn, did say that he, the said F. D. Gardner is the Mayor, and he, the said W. H. Weber is the City Manager of CITY OF FOREST GROVE, the within named corporation, and that the seal affixed to said instrument is the corporate seal of said Corporation, and that the said instrument was signed and sealed in behalf of said Corporation by authority of its Common Council, and F. D. Gardner and W. H. Weber acknowledged said instrument to be the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, this the day and year first in this, my certificate, written.



Mary F. Walsh
Notary Public for Oregon.

My comm. expires: *Feb 6, 1948*

FILED FOR RECORD *Feb 17* 1945 AT 4:15 P.M. W. A. TUPPER, COUNTY CLERK
BY O. SPRINGER, DEPUTY

TERMINATION OF RESERVATION AND RESTRICTION

THE CITY OF FOREST GROVE, a municipal corporation of the State of Oregon, executed a Warranty Deed recorded on June 2, 1941 in Book 199, Page 0395, in the official records of Washington County, State of Oregon. The Warranty Deed covered the real property commonly known as, 1939 23rd Avenue, Forest Grove, OR 97116, with the legal description of:

Beginning at the Southeast corner of Lot 1, Block 10, WALKER'S ADDITION TO FOREST GROVE, in the City of Forest Grove, County of Washington and State of Oregon; thence North 100 feet; thence West 50 feet; thence South 100 feet, and thence East 50 feet to the place of beginning.

The warranty deed sets forth reservations and restrictions for the benefit of The City of Forest Grove.

The reservations and restrictions set forth in the Warranty Deed are eliminated, effective immediately. The reservations and restrictions are null and void.

City of Forest Grove

Jesse VanderZanden, City Manager of Forest Grove
Date:

State of OREGON)
County of Washington)

This record was acknowledged before me on (date) _____, 20____ by (name(s) of individual(s)) _____ as (type of authority) _____ of (name of party on whose behalf record was executed) _____.

Notary Public for State of Oregon
My Commission Expires: _____



A place where families and businesses thrive.

CITY RECORDER USE ONLY:	
AGENDA ITEM #:	7
MEETING DATE:	1/22/18
FINAL ACTION:	2/20/18-21

CITY COUNCIL STAFF REPORT

TO: City Council

FROM: Jesse VanderZanden, City Manager

MEETING DATE: January 22, 2018

PROJECT TEAM: Daniel Riordan, Senior Planner, Bryan Pohl, Community Development Director, Ashley Driscoll, City Attorney

SUBJECT TITLE: Resolution Authorizing City Manager to Release Reservations and Restrictions Affecting 1939 23rd Avenue

ACTION REQUESTED: Ordinance Order Resolution Motion Informational

X all that apply

ISSUE STATEMENT:

Prior to 1941 the City of Forest Grove owned the property located at 1939 23rd Avenue (Washington County Map and Tax Lot 1N331CC02400) (Attachment A). The property is located at the northwest corner of Main Street and 23rd Avenue and is currently zoned Community Commercial.

The City sold the property and a warranty deed was recorded on June 2, 1941 in Book 199, Page 0395 in the official records of Washington County (Attachment B). The warranty deed contains specific reservations and restrictions on land use for the benefit of the City of Forest Grove. A prospective purchaser of the property owner requests that the property be released from restrictions still in effect established by the warranty deed recorded on June 2, 1941.

BACKGROUND:

The City Manager was contacted by Milan Hanson an attorney and representative of a client interested in purchasing property located at 1939 23rd Avenue. The title company involved in the transaction discovered restrictions put on the property by the City in 1941. The restrictions contained in the original warranty deed are described below:

1. Any structure erected shall comply with all of the fire regulations, building construction regulations and ordinances of the City of Forest Grove and the usual building permit shall be applied for and obtained;
2. That the products sold hereon shall be those usually sold in service stations to wit: gasoline, lubricating oil and sundry motor vehicle supplies, and that repair work may be done, but not any kind or type of wrecking or sale of second hand parts;

3. Grantee shall not sell or give away any type of merchandise supplies or amusements that will be interest to grade school children, nor shall he permit grade school children to visit or loiter or play around the premises during any regular school day;
4. That if any of the above conditions are violated and such violation continues for a period of two days after regular written notice has been served upon the purchaser by the Chief of Police, then and in that event the Common Council of grantor may, without further notice by Resolution revoke and rescind said permit and after said revocation further operations of said service station shall be deemed in violation of Ordinance No. 502, or that any violation of the above conditions may be restrained by an injunction to be issued by the Circuit Court of Washington County upon proper application.

In 1945 the City released one of the restrictions (#2 above) which prohibited use of the property as a gasoline station (Attachment C). The client interested in purchasing the property requests that the property be released from the remaining restrictions. Staff supports this request since the reasons supporting the restrictions no longer exist. For instance, the likely reason for the prohibition against selling or giving away merchandise of interest to children had to do with Lincoln School being located near the subject property. This school was sold to Pacific University for offices and no longer remains. In addition, this restriction predates current zoning of the property and is inconsistent with the current Community Commercial zoning of the site, which allows for general retail including merchandise that could be of interest to children. Staff also supports releasing the other restrictions as they are no longer necessary because the Forest Grove Code of Ordinances (aka Municipal Code) adopts by reference the Oregon building codes and Uniform Fire Code.

Approval of the attached resolution will authorize the City Manager to execute the necessary legal document (Attachment D) releasing 1939 23rd Avenue from remaining restrictions contained in the warranty deed.

FISCAL IMPACT:

None.

STAFF RECOMMENDATION:

Staff recommends City Council approve the attached resolution authorizing the City Manager to execute the necessary legal document releasing the property form the land use restrictions still in effect established by the warranty deed recorded on June 2, 1941 in Book 199, Page 0395, in the official records of Washing County.

ATTACHMENT(s):

- A. Vicinity Map
- B. Warranty Deed for property located at 1939 23rd Avenue
- C. Release of Restriction
- D. Termination of Reservation and Restriction



A place where families and businesses thrive.

NOTICE OF PUBLIC HEARING FOREST GROVE CITY COUNCIL

NOTICE IS HEREBY GIVEN that the Forest Grove City Council will hold a Public Hearing on **Monday, January 22, 2018**, at **7:00 p.m.** or thereafter, in the Community Auditorium, 1915 Main Street, Forest Grove, to consider the following proposal:

PROPOSAL: Resolution authorizing the City Manager to execute a legal document necessary to remove restrictions limiting the use of property located at **1939 23rd Avenue, Forest Grove**. The restrictions were established by warranty deeded in 1941 and have been superseded by the Forest Grove Code of Ordinances, including the 2009 Forest Grove Development Code, as amended. The restrictions in the warranty deed to be removed include:

- Any structure erected shall comply with all of the fire regulations, building construction regulations and ordinances of the City of Forest Grove and the usual building permit shall be applied for and obtained;
- Grantee shall not sell or give away any type of merchandise supplies or amusements that will be interest to grade school children, nor shall he permit grade school children to visit or loiter or play around the premises during any regular school day;
- That if any of the above conditions are violated and such violation continues for a period of two days after regular written notice has been served upon the purchaser by the Chief of Police, then and in that event the Common Council of grantor may, without further notice by Resolution revoke and rescind said permit and after said revocation further operations of said service station shall be deemed in violation of Ordinance No. 502, or that any violation of the above conditions may be restrained by an injunction to be issued by the Circuit Court of Washington County upon proper application.

This hearing is open to the public and interested parties are encouraged to attend. If additional documents or evidence is provided in support of the proposal, any party shall be entitled to a continuance of the hearing. Unless there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven (7) days after the hearing. Information pertaining to this request may be obtained from Senior Planner Daniel Riordan, Community Development Department, 1924 Council Street (9am-5pm), (503) 992-3226, driordan@forestgrove-or.gov. A copy of the report is available for inspection before the hearing by visiting the City's website at www.forestgrove-or.gov. Writing comments or testimony may be submitted at the hearing, e-mailed to aruggles@forestgrove-or.gov, or sent to the attention of the City Recorder's Office, P. O. Box 326, 1924 Council Street, Forest Grove, OR 97116, prior to the hearing.

Anna D. Ruggles, CMC, City Recorder
City of Forest Grove

To be published: Wednesday, January 17, 2018



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 PO Box 22109 • Portland, OR 97269-2109
 Phone: 503-684-0360 Fax: 503-620-3433
 E-mail: legals@commnewspapers.com

AFFIDAVIT OF PUBLICATION

State of Oregon, County of Washington, SS I, Charlotte Allsop, being the first duly sworn, depose and say that I am the Accounting Manager of the **Forest Grove News-Times**, a newspaper of general circulation, published at Forest Grove, in the aforesaid county and state, as defined by ORS 193.010 and 193.020, that

**City of Forest Grove
 Notice of Public Hearing
 FGNT25053**

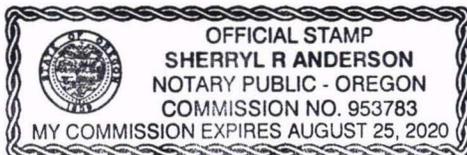
a copy of which is hereto attached, was published in the entire issue of said newspaper for

1
 week in the following issue:
January 17, 2018

Charlotte Allsop
 Charlotte Allsop, Accounting Manager

Subscribed and sworn to before me this
 January 17, 2018.

Sherryl R Anderson
 NOTARY PUBLIC FOR OREGON



Acct #298024
 PO #: 20165070
Attn: Anna Ruggles
 City of Forest Grove
 PO Box 326
 Forest Grove, OR 97116
 Size: 2 x 7.917"
 Amount Due: \$151.21*
 *Please remit to the above address.

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- That if any of the above conditions are violated and such violation continues for a period of two days after regular written notice has been served upon the purchaser by the Chief of Police, then and in that event the Common Council of grantor may, without further notice by Resolution revoke and rescind said permit and after said revocation further operations of said service station shall be deemed in violation of Ordinance No. 502, or that any violation of the above conditions may be restrained by an injunction to be issued by the Circuit Court of Washington County upon proper application.

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Anna D. Ruggles, CMC, City Recorder
 City of Forest Grove
 Publish 01/17/2018.

FGNT25053

Date: January 22, 2018

Agenda Item: 7.

Subject: PUBLIC HEARING AND RESOLUTION NO. 2018-21 AUTHORIZING CITY MANAGER TO RELEASE RESERVATIONS AND RESTRICTIONS AFFECTING 1939 23RD AVENUE

CITY COUNCIL MEETING

Request to Testify at Public Hearing

Public Hearings – Public hearings are held on each matter required by state law or City policy. Anyone wishing to testify should sign-in for the Public Hearing prior to the meeting. The Mayor or presiding officer will review the complete hearing instructions prior to testimony. The Mayor or presiding officer will call the individual or group by the name given on the sign-in form. When addressing the Mayor and Council, please move to the witness table (center front of the room). Each person should speak clearly into the microphone and must state their first and last name and provided a mailing address for the record. All testimony is electronically recorded. In the interest of time, Public Hearing testimony is limited to three minutes unless the Mayor or presiding officer grants an extension. Written or oral testimony is heard prior to any Council action.

Please sign-in below to testify.

PROPONENTS: *(Please print legibly)*

First & Last Name:

Address:

City, State & Zip Code:

OPPONENTS: *(Please print legibly)*

First & Last Name:

Address:

City, State & Zip Code:

OTHERS: *(Please print legibly)*

First & Last Name:

Address:

City, State & Zip Code:
